

‘The Annual General Meeting (AGM) is an important governance process for the members of an organisation. It can ensure transparency, provide updates and give members an opportunity to vote on a range of matters. New meeting technology and “virtual attendance” products offer the potential to change the format of the AGM. With particular reference to governance, discuss the relevance, future development and challenges of the AGM.’

On the 15th June 2016, the British fashion house Jimmy Choo PLC hosted the first UK fully electronic Annual General Meeting.¹ In the face of falling attendance at AGMs,² and with the appreciation that technology infiltrates almost every aspect of our lives, Jimmy Choo has taken a market first in the UK that is likely to set a trend for other companies. The time for traditional AGMs in large assembly halls could be nearing its end.

Taking the AGM virtual poses an interesting challenge for corporate governance. As one of the key purposes of these meetings is to facilitate the shareholder’s face-to-face interaction with company directors, electronic face-to-screen interaction may change the fundamental dynamics. This shake-up of the traditional AGM is therefore likely to have implications for corporate governance. The Cadbury Committee in 1992 defined corporate governance as ‘the system by which companies are directed and controlled.’³ Central to corporate governance is the role of the board of directors demonstrating the principles of leadership, effectiveness, accountability, communication with shareholders, and integrity.

This essay will first briefly explore the current debate surrounding the AGM and explain the virtual technologies available for meetings. This essay will then argue that, while the virtual meeting may enhance some elements of corporate governance, it runs a real risk of opening a Pandora’s box of problems for accountability, transparency and communication with shareholders. In addition, poor handling of virtual meetings could create legal issues that would not only problematize corporate governance, but also gamble away investor and consumer confidence in corporations. With these potential pitfalls in mind, this essay will argue for a hybrid form of the AGM (holding both virtual and physical meetings). While some risks may still remain, this essay will suggest strategies, procedures, and policies in which these risks can be managed.

I Importance of the AGM and its challenges

The AGM is the principal forum in which directors account to shareholders for their stewardship of the company. The UK Corporate Governance states that the ‘Board should

1 Jimmy Choo PLC, ‘Notice of Annual General Meeting’,
<http://www.jimmychoopl.com/media/18820/24189_JimmyChoo_2015AR_AGM_AW.pdf>

2 ‘AGM’ is used interchangeably with ‘meeting’ throughout this essay.

3 Cited in the UK Corporate Governance Code (2016), <<https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>>

use the AGM to communicate with investors and encourage their participation.⁴ It is not simply a forum for the directors to present speeches to shareholders, but for shareholders to ask questions and debate.⁵ At a sociological level, it has been recognised by Apostolides and Boden that the AGM offers a stage for ‘power plays’ where there is a ‘discipline of the meeting [which] results in some form of a governance control over companies.’⁶ Meetings are also the place for shareholders to exercise their fundamental rights to vote on important resolutions such as remuneration for directors.

While it is beyond doubt that the AGM is important, there is a growing feeling that the meeting, in its traditional form, is out of kilter with modern realities and is sliding into irrelevance. For instance, Baroness Kingsmill has lambasted AGMs as ‘diminishing in importance’ as they are no longer ‘representative and effective.’ She tentatively suggests that ‘perhaps it is time to end the big expensive set piece AGMs and hold virtual meetings online.’⁷ Research from Equiniti suggests that 76% of shareholders interviewed think that companies should do more to encourage shareholder engagement, which may indicate that the AGM needs to be revived.⁸

II Concept of the virtual meeting

A virtual meeting involves using existing technology to allow shareholders to participate remotely. Technologies vary as there are different providers,⁹ but technologies generally involve a teleconference line or video-over internet protocols software.¹⁰ In the Jimmy Choo AGM, EQS Group provided shareholders with an authentication process, and voting took place through the Lumi AGM mobile platform.¹¹

For the purposes of this essay, it is useful to distinguish between a ‘full’ and ‘hybrid’ virtual meeting. A full virtual meeting is entirely non-physical: shareholders ‘attend’ through logging-in to their computers, tablets or smartphones. In contrast, a hybrid virtual meeting is mixed: shareholders can connect via their computers, but they can instead choose to attend in person.

4 Principle E.2 of the UK Corporate Governance Code.

5 ‘The Law of Difficult Meetings.’ Slaughter and May (February 2013), page 1. <<https://www.slaughterandmay.com/media/803989/the-law-of-difficult-meetings.pdf>>

6 Nicholas Apostolides, ‘Exercising Corporate Governance at the Annual General Meeting’, in *Corporate Governance: The International Journal of Business in Society*, 10 (2), pages, 140-149.

7 Denise Kingsmill, ‘Should we ditch expensive AGMs and hold virtual meetings online?’ <<http://www.managementtoday.co.uk/ditch-expensive-agms-hold-virtual-meetings-online/article/1295031>>

8 Stuart Ellen, ‘AGM innovation’, <<https://www.icsa.org.uk/knowledge/governance-and-compliance/analysis/september-2016-agm-innovation>>

9 For instance, EQS Group, VP Securities and Omni Market Tide.

10 Michael Blatchford, ‘How to Attend an AGM in your Pajamas: A Guide to Virtual Meetings for Not-for-Profits in Canada’, <https://www.bht.com/sites/default/files/Virtual%20Meetings%20-%20CBA%20paper_0.pdf>

11 ‘EQS Group facilitate the first virtual AGM in the UK’, <<http://www.businesswire.com/news/home/20160830005551/en/EQS-Group-facilitate-virtual-AGM-UK>>

III Virtual AGM and beneficial impact on corporate governance

There is a clear practical benefit for companies holding virtual meetings. Beyond saving meeting costs for companies, it gives all shareholders the option to attend a meeting in the comfort of their own homes. The value in this is to potentially increase attendance by inviting a broader and more representative cross-section of the membership. For instance, it would allow those to participate if attending in person was not viable, such as the barrier of travel time or cost. Additionally, it could benefit those with physical disabilities who may find attending in person far more difficult compared with online access. This opens up the possibility of increasing the participation of minority shareholders who can express their views virtually. As courts and commentators have observed, this could even change the course of corporate policy even though these shareholder do not carry the vote.¹² Increasing the likelihood of broader shareholder participation would inevitably support the corporate governance code that ‘a satisfactory dialogue with shareholders takes place.’¹³ At a deeper level, increasing participation of those with disabilities may also reflect companies’ diversity and inclusion values; setting the values of the company is a key corporate governance aim.¹⁴

A virtual meeting also helps to remove some of the limitations found in the traditional meeting venues. Given that all members should be able to see and hear the Chairman and all the speakers in meetings,¹⁵ virtual meetings can overcome the problems found in venues such as Westminster Hall, where the balcony overhangs the lower seating area, affecting visual contact between those on the floor and on the balcony. Additionally, those with hearing-impairments may struggle to hear in meetings where there tends to be background noise. While some physical meetings provide signers, not all do, and not all hearing-impaired individuals use and understand sign language. Virtual meetings may offer better audio quality as it is not likely to be given in large halls where background noise and echoing can cause sound issues.

IV Drawbacks

Despite the clear benefits of the virtual AGM, it also poses some real risks for corporate governance. While virtual meeting technology allows members to put forward questions to the board, there is no guarantee that these questions will be answered. Difficult questions may conveniently slip into the cyber ether. For instance, Symantec, the American software company, was reported to ignore some questions at its virtual meeting.¹⁶ By contrast, it is hard to avoid being asked difficult questions in physical

12 Elizabeth Boros, ‘Virtual Shareholder Meetings’, 3 *Duke Law & Technology Review* 1-10 (2004). <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1112&context=dltr>>

13 UK Corporate Governance Code (2016), <<https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>> page 6.

14 Paragraph 3 of the UK Corporate Governance Code (2016), <<https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>> page 1.

15 *Byng v London Life* [1989] 1 All ER 560.

16 ‘US companies embrace virtual annual general meetings’, March 11, 2016, *The Financial Times* <<https://www.ft.com/content/874879c0-e664-11e5-bc31-138df2ae9ee6>> The nature of the questions that were supposedly unanswered was not reported on in this article.

meetings. While the Chairman is under no obligation to answer questions,¹⁷ there is impact in at least asking the question. For instance, omitting to answer a question or to obfuscate, could speak volumes about a particularly thorny issue. It may also prompt further lines of questioning from other members. In comparison, it is far easier at electronic meetings to manage difficult questions and, at its extreme, virtual meetings hold the possibility of operating a form of censorship. For instance, a Chairman could silence or block known troublemakers from participating online. This could be disastrous in terms of transparency, and exclusion from participation online without cause could be legally questionable given the right of members to attend meetings. This could prompt litigation for some companies: in *Byng v London Life*,¹⁸ it was judged to be ‘plainly unsatisfactory’ that members could not be heard by the Board and Chairmen.

Virtual meetings also remove the opportunity to witness the conduct of how the Chairman responds to questions. The Chairman’s conduct is often scrutinised by members if done in a contemptuous manner. By contrast, it would be difficult to sufficiently mimic the body language and non-verbal communication of directors and the Chairman in virtual meetings; and this would be impossible to witness if the virtual meeting does not offer a webcast to online participating members.

Beyond the questioning characteristic that is crucial in the process of transparency and accountability in meetings, there is another way in which the element of confrontation could be removed. For some companies, the AGM provides an arena for protest. The protest is not always from shareholders, but from those concerned by the wider issues at stake in the company’s impact on world, such as on the environment or the economy. For instance, at the 2013 AGM of Citigroup in New York, there was a protestor dressed in spandex, brandishing a whip and holding up a provocative sign that indicated she wished to punish the misconduct of bankers.¹⁹ Baroness Kingsmill reported streaking women with objections to an oil company written on their bodies at an oil company AGM.²⁰ It could be argued that there is value in holding virtual meetings as these disruptions would be removed from meetings. This helps to satisfy the directors’ and Chairman’s duty to maintain order and discipline in the meeting.²¹

However, it would be a mistake to suggest that these protests only hinder the process of corporate governance. At an indirect level, there is considerable value in these protests because they can raise awareness to the shareholder (particularly retail) of any financial, reputational or ethical issues of which they should be aware. These issues can inform how shareholders regard the company they have invested in, and influence whether they want

17 ‘The Law of Difficult Meetings’, Slaughter and May (February 2013). <<https://www.slaughterandmay.com/media/803989/the-law-of-difficult-meetings.pdf>> Page 1.

18 *Byng v London Life* [1989] 1 All ER 560.

19 ‘US companies embrace virtual annual general meetings’, March 11, 2016, *The Financial Times* <<https://www.ft.com/content/874879c0-e664-11e5-bc31-138df2ae9ee6>>

20 Denise Kingsmill, ‘Should we ditch expensive AGMs and hold virtual meetings online?’, <<http://www.managementtoday.co.uk/ditch-expensive-agms-hold-virtual-meetings-online/article/1295031>>

21 ‘The Law of Difficult Meetings.’ Slaughter and May (February 2013). <<https://www.slaughterandmay.com/media/803989/the-law-of-difficult-meetings.pdf>> Page 1.

to continue their investment. Whilst it is true many companies tackle difficult issues in the content of their meetings, such as BP in regards to the Deepwater Horizon oil spill,²² arguably it is still important for shareholders to visibly experience that the behaviour of some companies elicits very strong responses from some members of the public. For instance, at the British Gas AGM in 1995, a twenty-stone pig called Cedric turned up at a British Gas AGM in protest against chief executive Cedric Brown's pay.²³ These protests can influence how shareholders scrutinise and interact with companies, and the types of questions they may ask. This is all crucial in the accountability and transparency process in corporate governance.

Other drawbacks to virtual meetings include issues relating to cyber security. For instance, there are risks that high-profile AGMs could be the target of cyber-attacks, which could manipulate the transmission of the meeting's content, or interfere in the voting process. More generally, IT issues could also be problematic for shareholders. This would clearly adversely affect the corporate governance principle of communicating with shareholders.

V Suggesting ways forward, mitigating and solving risks

While being more costly for companies, a better way forward would be to hold hybrid – both virtual and physical – meetings. This would give the option to shareholders to either attend in person or online, and likely to increase overall attendance. In addition, a hybrid approach would combine most of the benefits described above of both virtual and physical meetings. However, some of the risks to corporate governance may still be present; and a hybrid meeting may generate new practical problems. These issues will be explained and mitigating ways forward will be suggested.

The opportunity to confront the Board with difficult questions will be more possible with a mixed meeting. Those at the physical meeting will be able to put forward questions. The risk of censorship, however, will still be possible with the online questions. A potential way to mitigate this would be for shareholders to elect an impartial individual to manage the questions put forward online to ensure that questions are not ignored. Dirk Zetzsche refers to this individual as a 'shareholder rights manager' who would be responsible for 'designing and monitoring the exercise of web-based shareholder rights.'²⁴ The importance that this individual is impartial cannot be overstated as illustrated from the following example. At a discussion about virtual shareholder meetings which invited online participation from members, two journalists acted as interlocutors and read questions from the online participators. One of the journalists said that it became apparent that '[we] were probably the most powerful people at the meeting: we could prioritize,

22 Mentioned by Chairman of BP, Carl-Henric Svanberg, in his speech at the 2016 AGM. <<http://www.bp.com/en/global/corporate/press/speeches/2016-annual-general-meeting-chairman.html>>

23 Angela Jameson, 'Governance in focus: When annual meetings become forums for confrontation', <<http://www.thenational.ae/business/economy/governance-in-focus-when-annual-meetings-become-forums-for-confrontation>>

24 Dirk Zetzsche, 'Corporate Governance in Cyberspace – A Blueprint for Virtual Shareholder Meetings', Centre for Business and Corporate Law Research Paper Series, June 2005. Downloaded from: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=747347>

rephrase or ignore questions... We could have made everything up.’²⁵ Electing a suitable shareholder rights manager must therefore be a task for shareholders. The introduction of a shareholder rights manager may also indirectly enhance the board and committee’s effectiveness, especially in furthering the directors’ continuing development on ways to innovate and improve on corporate governance.

Managing cyber-security when it comes to virtual meetings is crucial. It is potentially an area of particular vulnerability given that electronic meetings are recent innovations (at least in the UK); and it is not yet known how cyber-attacks could affect online meetings. It is an issue that requires vigilance, careful monitoring, and research. In addition, IT issues are likely to present problems for virtual meetings. In terms of managing this, it is useful to draw guidance from *Byng v London Life*,²⁶ which is a notable case not only because it gave blessing to the use of audio-visual links in AGMs, but also because it ruled that an adjournment or suspension is necessary if audio-visual links break down. It is a reasonable assumption that guidance from this case will also apply and have relevance in virtual meeting technologies. In this light, companies should be prepared to pause meetings if technology issues arise for members participating online, and develop strategies on how best to manage the physical meeting during these suspensions.

VI Conclusion

In an age of apps where Google Maps, Uber and Deliveroo are the new status quo for many, and a time when ‘every company is a technology company’,²⁷ it seems that technological innovation of the Annual General Meeting is overdue for many companies in the UK. However, while this essay has argued that the AGM should be made virtually accessible as it can benefit corporate governance, the death knell has far from sounded for the traditional physical meeting. This is true because technology has not yet replaced the variety of benefits for corporate governance that a physical meeting offers. In addition, there are a number of risks that exist in virtual meetings that are difficult to mitigate at the current stage of technological development in meeting platforms; these risks could have adverse implications for corporate governance. Cyber-security risks also remain and will always be a constant threat.

As long as the risks are managed, there are real opportunities for UK companies to take advantage of having a hybrid approach to holding the AGM. This approach will provide the opportunity for companies to demonstrate that it wishes to further the overriding objective of the AGM, which is to communicate with investors and to encourage shareholder participation.

²⁵ Neil Stewart, ‘The debate about virtual shareholder meetings’,
<<https://www.irmagazine.com/articles/proxy-voting-annual-meetings/16596/debate-about-virtual-shareholder-meetings/>>

²⁶ *Byng v London Life* [1989] 1 All ER 560.

²⁷ Jacob Morgan, ‘Why every company is a technology company’,
<<https://www.forbes.com/sites/jacobmorgan/2015/12/23/why-every-company-is-a-technology-company/#56b2e671265b>>

The development of the virtual AGM therefore offers a much-needed rejuvenation of corporate governance. However, this option should only be viewed as complementary to the traditional meeting. Removing the traditional meeting altogether risks hindering corporate governance. And without good corporate governance, public trust and investor confidence are at risk of being eroded away.

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